

24. (New) The weight loss composition of claim 23, wherein:

the green tea is in an amount ranging from about 180 mg to about 325 mg;

the green tea leaf extract is in an amount ranging from about 35 mg to about 65 mg;

the chromium additive is in an amount ranging from about 50 mg to about 200 mg; and

the beta-hydroxy beta-methylbutyrate is in an amount up to about 75 mg.

R2
cont.

25. (New) The weight loss composition of claim 23, wherein the weight loss composition is in a form selected from the group consisting of a tablet, a powder, and a capsule.

REMARKS

In response to the Office Action, claims 14-22 have been cancelled, claims 1-13 have been amended, and claims 23-25 have been newly added. Claims 1-13 and 23-25 are currently pending in this application, of which, claims 1, 10, and 23 are independent.

Minor amendments were made to claims 1-13 to improve grammatical structure and claim readability. Claim 1 was amended to include beta-hydroxy beta-methylbutyrate. This element was deleted from dependent claim 3. Claims 1 and 10 were amended to include wherein the combination of the green tea, the beta-hydroxy beta-methylbutyrate, the green tea leaf extract, and the chromium additive form the appetite suppressant. No new matter has been introduced to the application. Support for new claims 23-25 may be found at least at pages 3-5 of the specification.

Based on the above Amendments and the following Remarks, Applicant respectfully requests that the Examiner reconsider the pending rejections and that they be withdrawn.

Rejections Under 35 U.S.C. §112

In the Office Action, claims 1-5 and 7-13 have been rejected under 35 U.S.C. §112, second paragraph for indefiniteness. This rejection is respectfully traversed.

Specifically, the Examiner asserts that the term “extract” did not clearly define what extract the claims are referring to. The Office Action asserts that there are numerous extraction methods that will produce distinct products which may have different effects when administered to an individual. As an example, the Office Action states, “an organic solvent extract of green tea may not efficiently extract polyphenols.” (Office Action at page 3).

Applicant disagrees and respectfully contends that the terms of claim 1 and claim 10 are definite. Examination of the entire claim term shows that claim 1 is directed to “green tea leaf extract” and claim 10 is directed to “green tea leaf extract containing catechin polyphenols.” As instructed by MPEP §2111,

[d]uring examination, the claims must be interpreted as broadly as their terms reasonably allow. This means that the words of the claim must be given their plain meaning unless applicant has provided a clear definition in the specification.

MPEP §2111.01.

Claim 1 recites “green tea extract” and claim 10 recites “green tea extract containing catechin polyphenols.” The application teaches, for example, that the green tea extract is an extract of green tea that improves the fat burning efficiency of an individual and that extraction methods include those methods known to one skilled in the art. (Specification at page 3, lines 8-15). The terms “green tea leaf extract” and “green tea leaf extract containing catechin polyphenols”, are definite and must be given the broadest reasonable interpretation consistent with the specification as required by MPEP §2111.

Accordingly, Applicants respectfully request that the rejection over claims 1-5 and 7-13 be withdrawn as the claims in their original form are definite.

Claim 2 was rejected as being indefinite for the language “the chromium additive is in a form selected from the group consisting of polynicotinate, amino acid chelate, a chloride, and picolinate, and combinations thereof.” The Office Action states that “[t]his is contradictory to what is know in the art since chromium is not part of polynicotinate or chloride for examples and thus, chromium cannot be ‘in the form of’ polynicotinate or chloride or picolinate.” (Office Action, pages 3-4). While it appears that the Examiner has misread claim 2, claim 2 has been amended recite chromium polynicotinate, chromium amino acid chelate, chromium chloride, and chromium picolinate, and combinations thereof.

Accordingly, Applicants respectfully request that the rejection over claim 2 be withdrawn.

Rejections Under 35 U.S.C. §103

Claims 1-13 stand rejected under 35 U.S.C. §103(a) for being unpatentable over U. S. Patent No. 6,383,482 issued to Gorsek (“Gorsek”) in view of G. Eisenberg, “HMB and Pyruvate Anchor Sports Nutrition Sales,” Natural Foods Merchandiser, May 1998, page 81 (“Eisenberg”). This rejection is respectfully traversed.

Claims 1 and 10 are directed to specific combinations of elements for an appetite suppressant. Each claim requires a specific combination of elements to form the appetite suppressant. Claim 1 requires the combination of green tea, green tea leaf extract, beta-hydroxy beta-methylbutyrate (“HMB”) and a chromium additive. Claim 10 requires green tea, green tea

leaf extract containing catechin polyphenols, a chromium additive, 5-hydroxytryptophan, and beta-hydroxy beta-methylbutyrate ("HMB").

Gorsek is directed to a weight loss formulation that contains a green tea extract, hydroxycitric acid, 5-hydroxytryptophan, glucomannan, chromium picolinate, and *lactobacillus acidophilus*. Gorsek fails to disclose, teach, or suggest an appetite suppressant as required by claims 1 and 10. Among other things, Gorsek fails to disclose, teach or suggest, an appetite suppressant comprising the combination of green tea, green tea leaf extract, HMB, and a chromium additive as required by claims 1 and 10. Accordingly, Gorsek fails to disclose, teach or suggest all the elements required by claims 1 and 10.

The deficiencies of Gorsek are not cured by Eisenberg. Rather, Eisenberg teaches away from the claimed invention and suggests that HMB is not an appetite suppressant and is used to gain weight. Eisenberg is an article that discusses the use of HMB and pyruvate in sports nutrition. Eisenberg teaches that HMB is not an *appetite suppressant*. For example, the article discloses that one person taking HMB as a supplement gained three pounds in the first five days and gained 12 more pounds over the next two weeks. (Eisenberg at column 2-3.) Further, Eisenberg states that athletes and celebrities *are moving away from appetite suppressers and toward supplements such as HMB* to reduce fat, increase muscle mass and increase endurance. (Eisenberg, column 4)(emphasis added.)

Accordingly, Gorsek and Eisenberg whether taken alone or in combination with one another fail to disclose, suggest or teach an appetite suppressant comprising the combination of green tea, green tea leaf extract, HMB and a chromium additive as required by claim 1 and 10.

For at least the foregoing reasons, Applicant respectfully requests that the rejection over claims 1-13 be withdrawn.

Added Claims 23-25

Claims 23-25 were added to the application, of which, claim 23 is independent. Similar to claims 1 and 10 above, claim 23 is directed to a weight loss composition that comprises the combination of green tea leaf extract, HMB, and a chromium additive. For the reasons stated above with respect to claims 1 and 10, Applicant respectfully contends that claims 23-25 are also patentable over Gorsek and Eisenberg.

Other Matters

A petition for a one (3)-month extension is filed herewith together. It is not believed that any further extensions of time or fees for net addition of claims are required other than the accompanied petition. However, if additional extension of time are necessary to prevent abandonment of this application, then such extensions of time are hereby petitioned under 37 C.F.R. §1.136(a), and any fees required therefor (including fees for net addition of claims) are hereby authorized to be charged to our Deposit Account No. 23-1951.

CONCLUSION

All of the stated grounds of objection and rejection have been properly traversed, accommodated, or rendered moot. Applicants therefore respectfully request that the Examiner reconsider all presently outstanding objections and rejections and that they be withdrawn. Applicants believe that a full and complete response has been made to the outstanding Office Action and, as such, claims 1-13 are in condition for allowance. If the Examiner believes, for any

John MAMANA
Application No. 09/880,084

reason, that personal communication will expedite prosecution of this application, the Examiner is invited to telephone the undersigned at the number provided.

Prompt and favorable consideration of this Amendment is respectfully requested.

Respectfully submitted,



Philip D. Lane, Ph.D.
Reg. No. 41,140

Date: March 10, 2003

McGuire Woods LLP
1750 Tysons Boulevard
Suite 1800
McLean, VA 22102-4215
Tel: 703-712-5069
Fax: 703-712-5296

APPENDIX A

The “marked-up” version of the amended claims is as follows:

1. (Amended) An appetite suppressant, comprising:
green tea;
beta-hydroxy beta-methylbutyrate;
green tea leaf extract; and
a chromium additive,
wherein the combination of the green tea, the beta-hydroxy beta-methylbutyrate, the green tea leaf extract, and the chromium additive form the appetite suppressant.
2. (Amended) The appetite suppressant of claim 1, wherein the chromium additive is [in a form] selected from the group consisting of chromium polynicotinate, chromium amino acid chelate, [a] chromium chloride, and chromium picolinate, and combinations thereof.
3. (Amended) The appetite suppressant of claim 1, further comprising[:] 5-hydroxytryptophan[; and beta-hydroxy beta-methylbutyrate].
4. (Amended) The appetite suppressant of claim 1, wherein the green tea is in an amount ranging from about 175 mg to about 325 mg.
5. (Amended) The appetite suppressant of claim 1, wherein the green tea leaf extract is in an amount ranging from about 10 mg to about 90 mg.

6. (Amended) The appetite suppressant of claim 1, wherein the green tea leaf extract contains about 50% catechin polyphenols.

7. (Amended) The appetite suppressant of claim 1, wherein the green tea is in an amount of about 250 mg and the green tea leaf extract is in an amount of about 50 mg.

8. (Amended) The appetite suppressant of claim 1, wherein the appetite suppressant is the form selected from the group consisting of a tablet, a powder, and a capsule.

9. (Amended) The appetite suppressant of claim 1, wherein the chromium additive is in a range [ranges] from about [50mg] 50 mg to about 200 mg.

10. (Amended) An appetite suppressant, [consisting of essentially of] comprising:
green tea
green tea leaf extract containing catechin polyphenols;
a chromium additive;
5-hydroxytryptophan; and
beta-hydroxy beta-methylbutyrate,
wherein the combination of the green tea, the green tea leaf extract, the chromium additive, the 5-hydroxytryptophan, and the beta-hydroxy beta-methylbutyrate form the appetite suppressant.

11. (Amended) The appetite suppressant of claim 10, wherein[:] the green tea is in an amount ranging from about 180 mg to about 325 mg[:], and wherein the green tea leaf extract is in an amount ranging from about 35 mg to about 65 mg.

12. (Amended) The appetite suppressant of claim 10, wherein appetite suppressant is in a form selected from the group consisting of a tablet, a powder, and a capsule.

13. (Amended) The appetite suppressant of claim 10, wherein the chromium additive is in a range from about 50 mg to about 200 mg [200mg].